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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARK MILLER,

Plaintiff,

v.

MARTIN NAUGHTON, et al.,

Defendants.

Case No. 3:18-cv-00136-MMD-CLB

**MOTION TO CONTINUE EARLY
MEDIATION CONFERENCE**

Defendants, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, and Douglas R. Rands, Senior Deputy Attorney General, hereby submit their Motion to Continue Early Mediation Conference. This motion is based on the following Memorandum of Points and Authorities, the attached declaration, and all papers and pleadings on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

This is a *pro se* prisoner civil rights action brought by Mark Miller, (Plaintiff), asserting claims arising under 42 U.S.C. § 1983. Plaintiff alleges an Eighth Amendment claim for deliberate indifference to serious medical needs.

In its Screening Order, this Court stayed the case for ninety (90) days for the parties to pursue settlement. (ECF No. 11 at 6:1) The Court also ordered the parties to participate in an inmate early mediation conference (EMC). (ECF No. 11 at 6). The EMC is set for Tuesday, October 13, 2020.

Plaintiff's complaint alleges the following. Plaintiff claims to suffer from Hepatitis C ("Hep-C"). (ECF No. 6 at 3) Plaintiff is a 63-year-old man who alleges he is in his fourth decade of having a chronic hepatitis C infection ("HCV"). (Id. at 3.) Dr. Naughton is Plaintiff's primary care provider and

1 is responsible for treating Plaintiff's HCV. (Id. at 4.) Plaintiff alleges Dr. Naughton knew that Plaintiff
 2 was in his fourth decade of HCV, that Plaintiff's HCV was progressing rapidly, that Plaintiff's APRI
 3 score increased to 10 points in less than a year, that Plaintiff had significant fibrosis, and that Plaintiff
 4 needed HCV treatment. (Id.) According to Plaintiff, Dr. Naughton refuses to treat Plaintiff with current
 5 medication to eradicate Plaintiff's HCV in order to save the NDOC money and maintain job security
 6 but not for any medical reason. (Id.) Based on these allegations, Plaintiff asserts that Defendant violated
 7 his Eighth Amendment rights. (Id. at 4.)

8 In preparing for the EMC and drafting the statement, it became clear that an EMC on Tuesday,
 9 October 13, 2020 would not be an efficient use of the Court's resources. The Office of the Attorney
 10 General has been advised, by the Court, that when these situations arise, the Court should be notified.
 11 This Motion is the notification to the Court that the EMC scheduled is not likely to be successful.

12 Defendants cannot discern any monetary value to Plaintiff's claims. Plaintiff is only requesting
 13 injunctive relief. He did not request money damages in his complaint. Due to the settlement in the
 14 Class Action, *In re HCV litigation*, USDC 3:19-cv-00577-MMD-CLB we are not able to offer
 15 expedited treatment. The class action fairness hearing is scheduled for October 27, 2020. Plaintiff is a
 16 member of the class, which will determine many of the treatment issues. It would not be fair to the
 17 other members of the class to move Plaintiff to the front of the line. Therefore, the EMC will not likely
 18 be effective.

19 Moreover, counsel recently spoke with Associate Warden Lisa Walsh, who will serve as an
 20 NDOC representative at EMCs. Counsel and Associate Warden Walsh discussed Plaintiff's claims and
 21 his settlement demand, and Associate Warden Walsh agreed that the EMC would be futile. Therefore,
 22 Defendants respectfully request this Honorable Court vacate the upcoming early mediation conference,
 23 at least until after the fairness hearing in the Class Action litigation.

24 DATED this 8th day of October, 2020.

25 IT IS SO ORDERED.

AARON D. FORD
 Attorney General

26 Dated: October 8, 2020.

27 By: /s/ Douglas R. Rands
 DOUGLAS R. RANDS, Bar No. 3572
 Senior Deputy Attorney General

28 
 UNITED STATES MAGISTRATE JUDGE

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 8th day of October, 2020, I caused to be served a copy of the foregoing, **MOTION TO CONTINUE EARLY MEDIATION CONFERENCE** by U.S. District Court CM/ECF Electronic

Filing to:

Mark Miller, #44747
Care of NNCC Law Librarian
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702
lawlibrary@doc.nv.gov

/s/ Roberta W. Bibee

An employee of the
Office of the Attorney General

DECLARATION
OF
Douglas R. Rands

**DECLARATION OF DOUGLAS R. RANDS
IN SUPPORT OF DEFENDANTS' MOTION TO CONTINUE
EARLY MEDIATION CONFERENCE**

I, DOUGLAS R. RANDS, being first duly sworn, under penalty of perjury under the law of the United States, hereby depose and state as follows:

1. I am over the age of eighteen (18) and competent to testify hereto. All the statements contained in this declaration, except where otherwise indicated to be upon information and belief, are based on my personal knowledge and are true, accurate, and correct. If I am called to testify regarding the matters herein, I will testify consistently therewith.

2. I am an attorney duly licensed to practice law in the State of Nevada, and I have been admitted to practice before the United States District Court.

3. I am the attorney of record for the Defendants in the case styled as *Mark Miller v. Martin Naughton et al.*, case number 3:18-cv-00136-MMD-CLB.

4. I am entering this declaration in support of Defendants' Motion to Continue Early Mediation Conference

5. I drafted Defendants' motion and am familiar with the contents thereof, and I testify that it is true to the best of my knowledge.

6. Based on comments former Magistrate Judge Valerie Cooke made during an EMC in which she acted as the mediator, I was advised that the Court will consider such motions when settlement is hopelessly unrealistic, and the EMC would be futile.

7. This is a case where Plaintiff's sole demand is for treatment for his alleged HCV condition.

8. Due to the upcoming Fairness hearing in the Hep C class action matter, settlement of this case, at the EMC will be futile.

9. Additionally, I have reviewed Plaintiff's latest lab results, and he may not even have the HCV virus. While he has a fibrosis score, he does not, quantitatively have the virus detected in his system, according to the report.

10. In preparation for this EMC, I contacted Associate Warden Lisa Walsh who serves as an NDOC representative at EMCs. I explained the claims in Plaintiff's complaint and Plaintiff's

1 settlement demand. Associate Warden Walsh rejected Plaintiff's settlement demand. Associate
2 Warden Walsh also concluded the EMC would be futile and authorized me to move to continue the
3 EMC.

4 FURTHER, I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 to the truth and
5 accuracy of this declaration.

6 Dated this 8th day of October, 2020.



8 DOUGLAS R. RANDS